

ST 03-0185-GIL 11/18/2003 EXEMPT ORGANIZATIONS

Organizations that make application to the Department and are determined to be exclusively religious, educational, or charitable, receive an exemption identification "E" number. See 86 Ill. Adm. Code 130.2007. (This is a GIL.)

November 18, 2003

Dear Xxxxx:

This letter is in response to your letter dated April 21, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.1120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

As we discussed in our phone conversation on Wednesday, April 16, 2003, AAA makes every effort to comply fully with the tax laws in the numerous sales tax jurisdictions in which it operates. I have several requests for information listed below that will help clarify an issue that has been questioned by a tax exempt purchaser of AAA product.

Under recently changed business processes, dubbed the 'new business model', AAA has volunteered to collect and remit taxes on behalf of various independent companies and self employed individuals that retail AAA product in order to more efficiently administer the sales tax collection process. This process also helps insure that the State of Illinois receives all the sales tax due to the State from the various independent businesses and relieves the State of the administrative burden of processing numerous sales tax return forms each month.

Several questions have been raised regarding sales under the new procedures to tax exempt entities:

- What form of documentation is required to be kept by the company on a tax exempt sale in order for AAA to justify not collecting the tax? It has been suggested that simply providing the tax exemption number (undocumented) is sufficient to satisfy State requirements. If this is true, is AAA required to verify the accuracy of the number verbally provided in any way?

- Because AAA personnel administer the tax reporting process after the point of sale from its STATE location, it is impractical to review any claims of tax exemption at the point of sale. Is it permissible to charge sales tax and subsequently refund the tax once an exemption is verified? Alternatively is it permissible to halt the collection of sale proceeds until the tax exemption is verified?
- If a verbal representation of tax exemption is offered and accepted at the point of sale by a third party, and the representation from the buyer is ultimately proven to be false, which party is responsible for tax due and what re the reporting requirements?

I respectfully request that a response be forwarded to the fax number listed above as soon as is practical so that we may assess fully our responsibilities on the collection of Illinois taxes and adjust our procedures accordingly.

Thank you in advance for your cooperation, time and effort.

Organizations that make application to the Department and are determined to be exclusively religious, educational, or charitable, receive an exemption identification "E" number. See the Department's regulation at 86 Ill. Adm. Code 130.2007. This number evidences that this State recognizes that the organization qualifies as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of its organizational purpose. Sales to a governmental body are subject to tax unless the governmental body has an active exemption identification "E" number. See 86 Ill. Adm. Code 130.2080. If an organization or governmental body does not have an "E" number, then its purchases from your company are subject to tax. Only sales to the organization or governmental body holding the "E" number are exempt, not sales to individual members of the organization.

Organizations that have E numbers are allowed to engage in a very limited amount of retail selling without incurring Retailers' Occupation Tax liability. These limited amounts of selling are described in 86 Ill. Adm. Code 130.2005(a)(2) through (a)(4). An exempt organization may engage in sales to members, noncompetitive sales, and certain occasional dinners and similar activities (two fundraisers a year) without incurring Retailers' Occupation Tax liability. Organizations could use their E numbers to purchase items for such limited exempt sales.

However, if organizations engage in ongoing selling activities (such as Little League concession stands or sales of items in a thrift shop run by a church), they are retailers and must remit tax. As we discussed on the phone, manufacturers, importers or wholesalers may enter into an "agency agreement" with the Department, whereby they register, file returns and remit sales tax on behalf of their independent distributors. See 86 Ill. Adm. Code Section 130.550. Form RR-80, Agency Agreement may be used to obtain approval for this type of agreement with the Department. Under this type of agreement, the manufacturers, importers or wholesalers sell their products to the distributors and collect tax from the distributors based on the selling price of the products to the ultimate consumer. The tax therefore, is not calculated on the selling price to the distributor, but rather the applicable tax is calculated and collected based on the selling price of the product at retail. Under such an agreement, the independent distributor is not required to register with the Department, file a return and remit the tax because the manufacturer, importer or wholesaler has assumed those duties.

An independent distributor that agrees to allow the manufacturer, importer or wholesaler to register and remit taxes on its behalf should keep a copy of the agency agreement as proof that it is relieved from the duty to register and remit taxes on products sold at retail. A distributor may opt out of the agency agreement where the distributor wishes to register and remit its own taxes.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).]

Very truly yours,

Martha P. Mote
Associate Counsel

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